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January 11, 2012

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File No. 61-13000-542

VIA OVERNIGHT MAIL

National Labor Relations Board Office of the Executive Secretary 1099 14th Street, N.W. Washington, DC 20570

RE: Pamela Tronsor and Communications Workers of America Local 13000

Case No. 4-CA-38123

Dear Sir.

RICHARD H. MARKOWITZ *

MATTHEW D AREMAN +

* ALSO ADMITTED IN NEW YORK AND DISTRICT OF COLUMBIA

AND DISTRICT OF COLUMBIA

+ ALSO ADMITTED IN NEW JERSEY
+ ALSO ADMITTED IN DISTRICT OF COLUMBIA
** ALSO ADMITTED IN NEW JERSEY AND NEW YORK
*** ALSO ADMITTED IN VIRGINIA

Enclosed please find the original, plus seven (7) copies, of the Exceptions of Communications Workers of America, Local 13000, AFL-CIO, to the Decision of the Administrative Law Judge along with the original, plus seven (7) copies of the Brief on Behalf of Respondent in Support of Exceptions, which we are filing in the above-captioned matter.

Very truly yours,

RICHARD H. MARKQWI

Richard Huark

RHM/kb Encl.

Cc: National Labor Relations Board

Region 4

615 Chestnut Street, 7th Floor Philadelphia, PA 19106-4404 Attn: Patricia Garber, Esquire

Pamela Tronsor 1212 Martin Avenue Ephrata, PA 17522 HECEIVED

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NLRB ORDER SECTION

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA LOCAL 13000, AFL-CIO

AND

CASE NO. 4-CA-38123

PAMELA TRONSOR, an Individual

EXCEPTIONS OF COMMUNICATONS WORKERS OF AMERICA, LOCAL 13000, AFL-CIO TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Communications Workers of America, Local 13000, AFL-CIO (hereinafter referred to as "Respondent") files the within Exceptions to the Decision of the Administrative Law Judge, which is dated December 16, 2011, but which was never served on the undersigned counsel, as follows:

- 1. Respondent excepts to the Administrative Law Judge's finding that the charging party frequently performed work for Respondent, the largest Local of District 13, in planning and working on organizing campaigns. (Administrative Law Judge's Decision, page 2, lines 14-16)¹
- 2. Respondent excepts to the Administrative Law Judge's finding that Tronsor was employed by District 13 when the testimony disclosed that she was employed by Communications Workers of America. (ALJD, page 2, lines 5-7; Transcript of Trial, page 18)
- 3. Respondent excepts to the failure of the Administrative Law Judge to permit Respondent to explore the terms of any collective bargaining agreement between CWA Staff Union and Respondent and to determine whether or not such collective bargaining unit provided for impartial arbitration or other protection for the charging party against discharge or threat thereof. (Transcript, page 40)

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¹ The Administrative Law Judge's Decision will hereafter be referred to as "ALJD".

- 4. Respondent excepts to the Administrative Law Judge's reference that Tronsor was fearful for her job or that Harry Arnold had contacted the press and that Tronsor was concerned that members of the press would be at the hearing. Such testimony was discredited by the Administrative Law Judge. (ALJD, page 2, lines 37-39; ALJD, page 3, line 1; ALJD, page 5, lines 5-24)
- 5. Respondent excepts to the Administrative Law Judge's statement that an attempt to publicize a Board proceeding constitutes protected concerted activity. (ALJD, page 5, lines 31-35)
- 6. Respondent excepts to the Administrative Law Judge's finding that Tronsor was engaged in protected concerted activity by appearing at the Board hearing on February 28 and by calling Ross on February 28 and asking him to have a newspaper reporter cover the Board hearing. (ALJD, page 5, lines 40-43)
- 7. Respondent excepts to the Administrative Law Judge's determination that an attempt to cause an employer to discharge an employee does not require that the alleged wrong doer have an employer-employee relationship with the employee. (ALJD, page 6, lines 4-7)
- 8. Respondent excepts to the Administrative Law Judge's determination that Gardler's letter and email constitute an attempt by Gardler to have District 13 discharge Tronsor. (ALJD, page 6, line 52 and ALJD, page 7, line 1)
- 9. Respondent excepts to the Administrative Law Judge's finding that the April 5 letter sent by Respondent's President violated Section 8(a)(1) of the Act. (ALJD, page 7, lines 3,4)
- 10. Respondent excepts to the Administrative Law Judge's finding that the letter and email sent by Respondent's President could chill employees in the exercise of their Section 7

rights and that the sending of such letter and email violated Section 8(a)(1) of the Act. (ALJD, page 7, lines 3-7)

- 11. Respondent excepts to the failure of the Administrative Law Judge to consider or apply Section 8(c) of the Act, 29 U.S.C. §158(c).
- 12. Respondent excepts to the Administrative Law Judge's Conclusion of Law No. 2 that Respondent violated Section 8(a)(1) of the Act by sending a letter dated April 5 which attempted to cause Tronsor's employer to discharge or otherwise discriminate against her and by sending that letter together with the May 5 email to CWA employees and officers of local unions. (ALJD, page 7, lines 13-18)
- 13. Respondent excepts to the Remedy proposed by the Administrative Law Judge and, in particular, to any proposed notice by Respondent that it has no objection to Tronsor working on projects involving Respondent. (ALJD, page 7, lines 20-29)
- 14. Respondent excepts to the Order recommended by the Administrative Law Judge. (ALJD, page 7, lines 35-46 and ALJD, page 8, lines 1-28)

WHEREFORE, Respondent requests that the Decision of the Administrative Law Judge be reversed and the Complaint in this matter be dismissed.

Respectfully submitted,

Richard H. Markowitz, Esq. (5158)

Attorneys for Respondent CWA, Local 13000

1100 North American Building

121 South Broad Street

Philadelphia, PA 19107

Date: January 11, 2012 (215) 875-3111

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 4

COMMUNICATIONS WORKERS OF AMERICA LOCAL 13000, AFL-CIO

AND

CASE NO. 4-CA-38123

PAMELA TRONSOR, an Individual

CERTIFICATE OF SERVICE

I, Richard H. Markowitz, Esquire, hereby certifies that on the 11th day of January, 2012, I caused true and correct copies of the foregoing Exceptions of Communication Workers of America, Local 13000, AFL-CIO to the Decision of the Administrative Law Judge, to be served upon the following, via first-class mail, postage prepaid:

National Labor Relations Board Region 4 615 Chestnut Street, 7th Floor Philadelphia, PA 19106-4404 Attn: Patricia Garber, Esquire

Pamela Tronsor 1212 Martin Avenue Ephrata, PA 17522

Richard H. Markowitz, Esq. (5\58)

Attorney for Local No. 13000 1100 North American Building

121 South Broad Street Philadelphia, PA 19107

(215) 875-3111

Date: January 11, 2012

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 13000, AFL-CIO

CASE NO. 4-CA-38123

and

PAMELA TRONSOR, an Individual,

BRIEF ON BEHALF OF RESPONDENT IN SUPPORT OF EXCEPTIONS

I. INTRODUCTION

This matter is before the National Labor Relations Board on exceptions filed by

Communications Workers of America (CWA) Local 13000 (hereinafter referred to as

"Respondent") to the Decision of the Honorable Joel P. Biblowitz, Administrative Law Judge,

dated December 16, 2011.

This matter arose by virtue of unfair labor practice charges filed by Pamela Tronsor, an employee of an international union, CWA (Transcript, page 18). A Complaint was issued on August 31, 2011, alleging that by letter dated April 5, 2011 and by e-mail dated May 5, 2011, Respondent attempted to cause Communications Workers of America, District 13, to discharge or otherwise discriminate against Tronsor because she participated in a Board proceeding and because Respondent believed she was seeking to publicize that proceeding. Respondent filed an Answer to the Complaint and a hearing was held on this matter before the Administrative Law

¹ The Decision of the Administrative Law Judge was never served upon, or mailed to, the undersigned counsel who represented Respondent at the hearing of October 24, 2011. I do not know whether this is the fault of the Division of Judges or the United States Post Office.

Judge on October 24, 2011. Briefs were filed with the Administrative Law Judge on December 9, 2011, and his Decision, to which exceptions are filed, is dated December 16, 2011.

II. STATEMENT OF THE CASE

The Charging Party, Pamela Tronsor, attended a Labor Board hearing on February 28, 2011, involving a Complaint against the Respondent, alleging that Harry Arnold, a local organizer for the Respondent, was unlawfully terminated. That evening, Tronsor called William Ross, the Executive Director of the Philadelphia Newspaper Guild, an affiliate of the CWA, and requested that a specific reporter be assigned to cover the hearing the next day. (The case was settled before the hearing resumed the next day.)² Ross replied that he did not make assignments of reporters.

James Gardler, the President of Local 13000, learned about Tronsor's telephone call several weeks later, in March of 2011. On April 5, 2011, Gardler wrote a letter to Edward Mooney, the principal officer of CWA District 13. The letter stated:

This letter is being sent on behalf of CWA Local 13000 pertaining to the conduct of the District 13 Organizer, Pam Tronsor, Our local has always been one of the strongest supporters and participants in all facets of organizing in the CWA, but we cannot in good conscience allow this staff member's actions pertaining to recent Labor Board charges filed against our local to go unaddressed. It was quite disturbing on the day of the hearing to see your organizer appear on behalf of the charging party since it is crystal clear that our local had not violated the law. It is also disturbing when you put it in perspective what the ramifications this charge would have had if by some small chance this charge was upheld. The organizing program of not only Local 13000 and District 13, but of the entire CWA as a whole would have been damaged. But as you may be aware her actions following the first day of hearings on the evening of February 28th are what are most appalling regarding this charge and cannot be tolerated.

² The Administrative Law Judge credited Ross' testimony and discredited Tronsor's statement that she called Ross to avoid a reporter and any publicity about the CWA (ALJD, page 5, lines 5-23).

Following a conditionally approved withdrawal of the charge that absolved the local of any wrongdoing, we became aware of a phone call that was placed after the initial day of hearings to Bill Ross, Executive Director of TNG-CWA Local 10. Apparently District Organizer Tronsor contacted Mr. Ross in an attempt to get this hearing publicized through the local media. She asked Mr. Ross if he had heard about the Labor Board hearing against Local 13000 and that she was testifying in a hearing against Local 13000. Mr. Ross explained that District Organizer Tronsor advised him that she felt they should have someone covering this story for the media. Mr. Ross said that he advised District Organizer Tronsor that he does not assign reporters to stories. Mr. Ross and I went on to discuss the mutual respect both of our locals have for one another and the commitment we have to support each other's issues, which is why he was so surprised to be receiving this call from District Organizer Tronsor...

It is beyond comprehension to think that this person is not only on staff for District 13 but responsible for the same organizing activities she sought to jeopardize. Her actions demonstrate contempt for the Local that provides more man hours and voluntary support for organizing than any other local within District 13. This local assisted in performing her job responsibilities even when she was nowhere to be found. There is no place for this type of behavior in District 13 or anywhere in the CWA.

As you can clearly understand this Local has no interest in working with someone that would put the CWA and more specifically this Local in harm's way. We would appreciate any and all steps necessary to remove this person from any dealings with the members of this union. She clearly cannot be trusted and without a doubt she is not deserving of a position on staff at District 13 or anywhere else within the CWA. (General Counsel's Exhibit 2)

On May 2, 2011, Tronsor asked Gardler for information in connection with an organizing drive. Gardler responded on May 5, 2011, in an e-mail to Tronsor and various other officers of Respondent and CWA and other local unions. This e-mail stated:

Pam, maybe you misunderstood the letter that Local 13000 provided to VP Mooney concerning your blatant attack on Local 13000. As I stated in that letter, you are not deserving of a staff position or any position within the CWA. This Local and our members will not work with you on any level. You have no

respect for organizing, no respect for the position you hold within the District and no respect for the CWA. The fact that you still hold a staff position at the District is disturbing. Attached as an FYI is the letter that was sent to VP Mooney to remind you of your stupidity. I have also CC several others pertaining to the issue so they can understand and protect themselves from future attacks. This Local is committed to organizing and will do any and everything necessary to succeed. It just WILL NOT be with YOU. General Counsel's Exhibit 2.

The Administrative Law Judge ("ALJ"), on page 7 of his Decision, concluded that:

The Respondent violated Section 8(a)(1) of the Act by sending a letter dated April 5 to District 13 attempting to caused District 13, Tronsor's employer, to discharge or otherwise discriminate against her, and by sending that letter, together with a May 5 email, to union employees, reiterating its desire that Tronsor be discharged, Respondent further violated Section 8(a)(1) of the Act.³

The Respondent has filed exceptions to the Decision of the ALJ, and this brief is filed in support of the Exceptions.

III. TRONSOR'S ACTIVITY IN REQUESTING PUBLICITY WAS NOT PROTECTED AND IT WAS NOT CONCERTED.

The Respondent has excepted to the finding that Tronsor was engaged in protected concerted activity by requesting a local union (Philadelphia Newspaper Guild) to provide a reporter to cover the Arnold hearing at the NLRB. (Exceptions 5 and 7).

The ALJ stated on page 5 that:

It is obvious that an attempt to publicize a Board proceeding constitutes protected concerted activity, even when it could cause harm to the employer's or the union's reputation, and that threats against an employee in retaliation for assisting the Board in an unfair labor practice or a representation case violates Section 8(a)(1) of the Act. In *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 740 (1973), the Court stated that the rights secured by Section 7 of the Act include "...the right to utilize the Board's

³ It is not clear what the Administrative Law Judge meant by the phrase "union employees." Does the term "union" mean Respondent or the international union? There is no evidence in General Counsel's Exhibit 3 or anywhere, to indicate that any person named therein was an employee of Respondent or the international union or was a supervisor of any employee.

processes- without fear of restraint, coercion, discrimination, or interference from their employer." See also *Allied Aviation Service Company of New Jersey, Inc.*, 248 NLRB 229, 231 (1980); *Anheuser-Busch, Incorporated*, 337 NLRB 3, 15 (2001); *Management Consulting, Inc.*, 349 NLRB 249 (2007). I therefore find that Tronsor was engaged in protected concerted activities by appearing at the Board hearing on behalf of Arnold on February 28, and by calling Ross on February 28 and asking him to have VonBergen cover the Board hearing.

None of the cases cited by the Administrative Law Judge in the above-quoted paragraph deal with "an attempt to publicize a Board proceeding" or have any real relevance to the instant case. In <u>Bill Johnson's Restaurants, Inc., supra</u>, the Supreme Court held that it could be an unfair labor practice for an employer to prosecute a baseless lawsuit with the intention of retaliating against an employee. In <u>Allied Aviation Services Company, supra</u>, the Board found that an employee was discriminated against for sending letters to an employer's customers. In <u>Anheuser-Busch, supra</u>, the Board found, <u>inter alia</u>, that an employer had threatened its employee for filing an unfair labor practice charge with the Board. In <u>Management Consulting</u>, <u>supra</u>, the Board found that an employer discriminated against its employee because she gave testimony in NLRB proceedings.

These cited decisions simply have no application to the instant case.⁵ Nothing in Respondent's communications, (GC Exhibit 2), in any way concern Tronsor's attendance at a Board hearing, her "participation", whatever that may mean, in a Board proceeding or her giving testimony in a Board proceeding, which she did not do. A careful examination of GC Exhibits 2 and 3 clearly indicate that Respondent was concerned with Tronsor's attempt to obtain publicity

⁴ The Administrative Law Judge incorrectly cited this case as decided in 1973. The correct date is 1983. Also, the Administrative Law Judge quoted the Supreme Court's comment that an employee has the right to be free from

[&]quot;interference from their employer." Here, of course, Respondent was not Tronsor's employer.

All the cited cases involve an employer's action against its employee by way of law suit, threats or actual discrimination. The instant case involves only an officer of Respondent expressing his opinion about the conduct and actions of the charging party who was not Respondent's employee, but an employee of the international union. (Transcript, page 71 and 72)

which would have been adverse to Respondent, not with her involvement in the Board proceedings. This is particularly relevant in view of Tronsor's position as a CWA organizer and Respondent's obvious reaction that an individual employed to engage in organizing could not attempt to secure publicity adverse to such organizing activities.

The Administrative Law Judge discredited Tronsor's rather lame explanation that she called Ross to avoid publicity for Respondent. He accepted Ross' testimony that Tronsor sought to publicize the unfair labor practice allegations against Respondent. But the Judge cites no authority and there is none, for the proposition that publicizing a Board proceeding in a newspaper is protected concerted activity.

There is simply no precedent which holds that an unsuccessful attempt to create adverse publicity for a constituent local union is protected concerted activity by an employee of an international union. Tronsor's action was not protected and was certainly not concerted.

There is not a shred of evidence on the record here that, when she requested the publicity, Tronsor was engaged in any concerted activity. She was acting entirely on her own. What she was doing might well, if successful, have had an adverse effect on Respondent's organizing efforts.

In this case Tronsor was not exercising any right protected by Section 7. She was not engaged in self-organization, she was not involved in forming, joining, or assisting a labor organization, or in collective bargaining. And most importantly, she was not engaged in any concerted activity at all, much less a concerted activity for the purpose of collective bargaining or other mutual aid or protection. Tronsor was acting as an individual, solely on her own behalf. She was not acting on behalf of any of her co-workers. None of her co-workers even knew of the activity which occasioned the criticism from Gardler.

The Board's test for concerted activity is whether activity is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." Meyers Industries (Meyers I), 268 NLRB 493 (1984), remanded sub nom. Prill v. NLRB, 755 F.2d 941 (D.C. Cir. 1985), cert. denied, 474 U.S. 948 (1985), on remand, Meyers Industries (Meyers II), 281 NLRB 882 (1986), aff'd sub nom. Prill v. NLRB, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied, 487 U.S. 1205 (1988).

Tronsor's conduct was the antithesis of the Meyers definition of concerted activity. She was not engaged in any activity with or on the authority of other employees. She was acting solely on her own behalf and by herself. While Prill in the above-referenced cases had an argument that his complaints about the brakes served the common cause of insuring the safety of the group of his co-workers, Tronsor's efforts did not in any way serve to better the working conditions of any employees.

IV. RESPONDENT DID NOT THREATEN TRONSOR IN RETALIATION FOR ASSISTING THE BOARD.

The Respondent has excepted to the finding that Respondent threatened Tronsor in retaliation for assisting the Board (Exception 6).

Gardler's communications were not occasioned by any assistance Tronsor may or may not have given the Board in the Arnold case. (The record does not specify what Tronsor did or did not do in the Arnold case, except that she was allegedly subpoenaed and was present at the first day of the hearing.)

Gardler's comments in the communications of April 5 and May 5 were not a reaction to any possible participation Tronsor might have had in the preparation or the actual hearing of the Arnold case. They related only to Tronsor's conduct in requesting a reporter, a fact of which

Gardler was not made aware until late March, 2011. Indeed, just about a week after the Arnold hearing, Gardler had an amicable meeting with Tronsor to prepare for an organizing campaign.

At this meeting no reference was made to the Arnold hearing, according to the testimony of both Gardler (68) and Tronsor (56).

The evidence in the record has focused on Gardler's reaction to hearing that Tronsor had contacted the local union of the Newspaper Guild after the close of the first day of the Arnold hearing in an effort to obtain a reporter to be present when the hearing resumed the next day.

Had Tronsor not requested media coverage for the hearing, Gardler would not have sent the messages at issue in this case.

At this point, let us take a closer look at Gardler's communications to Mooney and to Tronsor. In his letter to Mooney dated April 5, 2011, Gardler makes one brief reference in the first paragraph to Tronsor's presence at the Arnold hearing, but he goes on to state that Tronsor's "actions following the 1st day of hearings on the evening of February 28th are what ... cannot be tolerated" (General Counsel Exhibit 2).

In the second paragraph of this letter Gardler goes into great detail to repeat the contents of the telephone conversation between Tronsor and Bill Ross. Then in the third paragraph of his letter Gardler emphasized the importance he placed on his Union's organizing activities and that he feared that Tronsor had sought to jeopardize the success of these organizing activities.

This letter from Gardler to Mooney was written because Gardler wanted to safeguard Respondent's organizing activities, not because he wanted to retaliate against or threaten Tronsor for whatever she had to do with the Arnold hearing. Again in Gardler's e-mail to Tronsor on May 4, 2011, Gardler emphasized his concern with organizing. He states that: "This Local is

⁶ Page references, unless otherwise indicated, refer to the official transcript of the hearing held on October 24, 2011.

committed to organizing and will do any and everything necessary to succeed" (General Counsel Exhibit 2).

Gardler's testimony reiterates his belief that Tronsor's phone call to Ross could have had an adverse effect on the Union's ability to organize:

THE WITNESS: I almost fell out of my chair when he was explaining this to me, because I couldn't understand how someone who has an organizing position within the CWA would request that a reporter go over to cover a Board hearing that, again, if this came out in some type of public forum, it could hamper the local and the CWA's ability to conduct organizing drives going forward. (70-71).

There is simply no evidence that Gardler's letter to Mooney had anything to do with the NLRB proceedings. It is obvious that what concerned Gardler was Tronsor's request to Ross for media coverage. This is what was emphasized in Gardler's communications. Thus, all of Gardler's comments were motivated by his desire to safeguard organizing activities and had nothing to do with retaliating against Tronsor for whatever she may have done in connection with any Board proceeding.

V. RESPONDENT DID NOT ATTEMPT TO HAVE TRONSOR DISCHARGED.

The Respondent has filed exceptions to the conclusion that the communications of April 5 and May 5 were an attempt to discharge Tronsor. (Exceptions 9 and 13).

The communications referred to in the above-quoted conclusion contained absolutely no request that Tronsor, the charging party, be discharged. What the April 5 communication from Gardler, the President of Local 13000, to District 13, expresses is dissatisfaction with Tronsor's conduct in requesting that a reporter be assigned to cover the next day of a Labor Board hearing ("Arnold case") in which Local 13000 was the Respondent.

What the e-mail sent out by Gardler on May 5 does contain is, again, an expression of dissatisfaction with Tronsor's conduct and a statement that Local 13000 did not want to work with Tronsor in its organizing efforts.

Indeed, when Gardler e-mailed Tronsor on May 5, he knew that she still had her staff position, and he recognized that she would be continuing to perform her organizing duties in the future. Again, he stated that he simply wanted her to perform those duties in locations other than in Local 13000's territory. There were plenty of other locals in District 13 where Tronsor could work.

It is true that Gardler expressed his indignation in strong terms. But he did not request Tronsor's discharge or anything else beyond that she be re-assigned her from any contact with Respondent. Nor was he in any position to have an adverse effort on her employment status. (Transcript, pages 71 and 72) No action was taken against Tronsor because of Respondent's communications. (Transcript, page 61) And here we are, more than nine (9) months after the dates of Gardler's communications, and Tronsor still occupies her position unaffected by any adverse effects from Gardler's comments.

VI. RESPONDENT'S CONDUCT WAS PROTECTED BY SECTION 8(c) OF THE ACT.

The Respondent has excepted to the failure of the ALJ to conclude that Respondent's conduct was protected by Section 8(c) of the Act (Exception 12).

The ALJ nowhere in his Decision rules upon, or even considers, Respondent's assertion that its conduct was protected by Section 8(c) of the Act. Section 8(c) of the Act provides:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in writing, printed, graphic, or

visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Many years ago the Board considered Section 8(c) in <u>Livingston Shirt Corporation</u>, 107 NLRB No. 109 (1953). There the Board held that Section 8(c) "specifically prohibits us from finding that an uncoercive speech, whenever delivered by the employer, constitutes an unfair labor practice."

The Supreme Court upheld this principle in NLRB v. Gissel Packing Co., 395 U.S. 575, 618 (1969). It is certainly not necessary to quote the Court's Opinion in Gissel other than to note that the Board has frequently relied upon the Court's language to find language and comments to be protected violation of the Act. See, e.g., David Van Os & Associates, 346 NLRB No. 79 (2006); Wild Oats Markets, Inc., 344 NLRB No. 86 (2005); Curwood, Inc., 339 NLRB 1137 (2003).

Pursuant to Section 8(c), Gardler had the right to express his views and opinions concerning Tronsor's actions. He had the right to request that Tronsor not be assigned to work with his Local because, in his opinion, she had attempted to put Respondent "in harm's way" and he did not trust her.

In the communications at issue, Gardler was simply requesting that Tronsor not be assigned to work with his Local Union. In his letter dated April 5, 2011, to Ed Mooney, Gardler concluded:

We would appreciate any and all steps necessary to remove this person from any dealings with the members of this union. (General Counsel Exhibit 2)

⁷ The Supreme Court in the past year has emphasized the protections of the First Amendment. See <u>Snyder v. Phelps</u>, 131 S. Ct. 1207 (2011); <u>Sorrell v. IMS Health, Inc.</u>, ---- S. Ct. ----, 2011 WL (2472796 (June 23, 2011); <u>Brown v. Entertainment Merchant's Association</u>, ---- S. Ct. ----, 2011 WL 2518809 (June 27, 2011); <u>Arizona Free Enterprise Club's Freedom Club PAC v. Bennett</u>, ---- S. Ct. ----, 2011 WL 2518813 (June 27, 2011).

The ALJ has misstated Gardler's request as an attempt to cause her employer to discharge

Tronsor. To the contrary, Gardler's comments in his April 5 letter rest on the assumption that

Tronsor will continue to be employed by the International Union, but those comments request

that this continued employment not involve contact with Local 13000.

As a matter of fact, it is undisputed that Gardler had no authority to threaten reprisal or

force or to promise a benefit to Tronsor (Transcript page 71 and 72). Gardler had no control

over Tronsor's employment and did not supervise her in any way. Section 8(c) protects

Gardler's expression of opinion about Tronsor's conduct. His letters and email were not an

unfair labor practice.

VII. THE ALJ INCORRECTLY REFUSED TO PERMIT RESPONDENT TO INTRODUCE THE COLLECTIVE BARGAINING AGREEMENT BETWEEN

THE CWA STAFF UNION AND THE RESPONDENT. (EXCEPTION NO. 2).

In his cross-examination of Tronsor, the following colloquy occurred:

Is your employment with CWA covered by a collective

bargaining agreement?

A. Yes.

Does that collective bargaining agreement contain a

provision prohibiting discharge except for just cause?

MS. GARBER: Objection as to relevance.

JUDGE BIBLOWITZ: Sustained. Don't answer.

BY MR. MARKOWITZ:

Does that collective bargaining agreement contain an

arbitration clause?

MS. GARBER: Objection as to relevance.

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JUDGE BIBLOWITZ: Sustained. There's no relevance.

This case involves an alleged threat and there's no relevance to

those questions. (40).

Respondent asserts that if it had been permitted to introduce the collective bargaining

agreement, it could have shown that the collective bargaining agreement did contain a provision

prohibiting discharge except for just cause. Respondent could then have shown that Tronsor did

not file any grievance pursuant to that provision, and Respondent could have argued that she did

not file a grievance because she had not been threatened with discharge. The ALJ improperly

refused to permit Respondent to make this argument or any other argument in its defense based

on the collective bargaining agreement at issue.

VIII. CONCLUSION

For all the reasons set forth above, Respondent submits that the Board should reverse the

decision of the ALJ, should vacate the Order and remedy proposed by the ALJ, and should find

that the Complaint should be dismissed.

Respectfully submitted,

MARKOWITZ & RICHMAN

RICHARD H. MARKOWITZ, ESQUIRE

PAULA R. MARKOWITZ, ESQUIRE

1100 North American Building

121 South Broad Street

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(215) 790-0668

Dated: January 11, 2012

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 4

COMMUNICATIONS WORKERS OF AMERICA LOCAL 13000, AFL-CIO

AND

CASE NO. 4-CA-38123

PAMELA TRONSOR, an Individual

CERTIFICATE OF SERVICE

I, Richard H. Markowitz, Esquire, hereby certifies that on the 11th day of January, 2012, I caused true and correct copies of the foregoing Brief on Behalf of Respondent in Support of Exceptions, to be served upon the following, via first-class mail, postage prepaid:

National Labor Relations Board Region 4 615 Chestnut Street, 7th Floor Philadelphia, PA 19106-4404 Attn: Patricia Garber, Esquire

Pamela Tronsor 1212 Martin Avenue Ephrata, PA 17522

Date: January 11, 2012

Richard H. Markowitz, Esq. (5158)

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